Equality and Human Rights Commission

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Minutes of the 109th meeting of the Board of the EHRC

18 January 2023 (14:00 to 18:15)
Windsor House, London

Attending

Commissioners
Baroness Kishwer Falkner (Chairwoman), Arif Ahmed, Eryl Besse, Jess Butcher, Joanne Cash, David Goodhart, Alasdair Henderson, Kunle Olulode, Akua Reindorf, Su-Mei Thompson, Dr Lesley Sawers (VC) and Helen Mahy (VC, from 3pm).

Officers
Marcial Boo, Chief Executive Officer
Moya Alcock, Director, Communications (items 7 to 11) (VC)
Joe Corcos, Director, People and Infrastructure (item 7) (VC)
Megan Cruickshank, Senior Associate, Governance (VC)
Cath Denholm, Chief Operating Officer (VC)
Melanie Field, Chief Strategy and Policy Officer
Jacqueline Killeen, Chief Regulator
Sophie Bold, Director, Legal Policy and Advice (item 8)
Ruth Latusek, Senior Associate, Governance Lead (VC)
Beverley Reid, Senior Principal, Head of Business Improvement (item 10)
Britta Rinaldi, Chief of Staff (VC)
Kate Spencer, Director, Legal Policy and Advice (item 8)

Guests
Helen Anderson, Government Equality Hub (items 1 to 6)

1. Chairwoman's welcome and apologies

1.1 The Chairwoman welcomed attendees to the first EHRC Board meeting of 2023, with a special welcome to new Commissioners, Arif Ahmed, Joanne Cash and Kunle Olulode, as well as Helen Anderson, representing the Government Equality Hub. There were no apologies.

2. Declarations of interest

2.1 The Chairwoman advised that Akua Reindorf has been appointed King's Counsel and congratulated Akua on behalf of the Board.

2.2 The following interests were noted, and the Chairwoman determined that the conflicts were not reasons for the Commissioners to recuse themselves from items under discussion at the meeting:

a) Akua Reindorf has given advice internationally on the Scottish Gender Recognition Reform Bill, unrelated to areas of EHRC involvement;
b) Akua Reindorf has been instructed by the charity LGB Alliance to represent them in a legal case, unrelated to items under discussion at this meeting; and
c) Su-Mei Thompson attended the LGBT Consortium on 14 January in her role as Chief Executive at Media Trust.

3. Minutes of the 108th Board meeting (EHRC 109.01)

3.1 The Board approved the minutes of the meeting of 23 November as an accurate record subject to minor amendments to paragraph 5.3.

4. Actions arising (EHRC 109.02)

4.1 The Board agreed to appoint Eryl Besse as the Chair of the People and Workspace Committee (P&WC) with immediate effect, noting that Eryl will continue in her capacity as Wales Commissioner and Deputy Chair.

4.2 The Board noted the action log.

4.3 The Chairwoman advised that no comments had been received by correspondence in relation to the paper on taking forward the Sub-Committee on Accreditation (SCA) recommendations, provided under AOB. No additional comments were raised at the meeting. As such, the Board approved the recommendations in the paper:

a) to continue to pursue changes to secondary legislation to increase our powers, particularly through section 28(8) of the Equality Act 2006, and section 78 of the Equality Act 2010;
b) to amend our Framework Document with Government to reflect the issues highlighted in the SCA recommendations, with Board approval at its March 2023 meeting; and
c) to pursue options to increase our financial autonomy.

4.4 Commissioners were advised that the fees and expenses guidance for Commissioners and Committee members had been provided as an

information paper and to contact the Director of Planning and Governance with any queries.

4.5 The Chairwoman enquired whether there would be sufficient time for the Estates Strategy to go to the Board in June after going to the P&WC in May. The Chief Operating Officer advised that the date of the P&WC meeting in May is yet to be confirmed and that its timing will be considered in the context of the June Board meeting.

5. Committee and Commissioner Working Group updates

5.1 The Chief Operating Officer, on behalf of the Chair of the Audit and Risk Assurance Committee (ARAC), advised that ARAC had not met since the last Board meeting on 18 October 2022. ARAC would meet informally on 20 January to discuss the internal audit plan for 2023/24, with a formal meeting on 15 February to cover papers on regulation; the internal audit plan; cyber security, ICT security and disaster recovery; business continuity planning; risk management; and the relative costs and impact of our planned work.

5.2 The Chair of the P&WC advised that the P&WC met on 30 November. That had been the last meeting of its former Chair, Caroline Waters, and the first meeting for herself, Akua Reindorf and the new independent member, Jonathan Parsons. The meeting had covered relevant risks, the Change Programme, employee turnover, and the Corporate Values. The P&WC had not endorsed the version of the Corporate Values presented to the Board at this meeting, as their discussion had been on a previous iteration. The Chairwoman advised that she, with the Chair of P&WC and the CEO, had therefore determined that the paper on Corporate Values should return to the P&WC at its meeting on 2 February, with a final version coming to the Board on 30 March for decision.

Action: Director of People and Infrastructure to provide the Corporate Values paper to 2 February P&WC meeting and 30 March Board meeting.

5.3 The Chair of the Statutory Report Commissioner Working Group advised that the report is on track to be published in October 2023. A call for evidence has been issued and the Working Group has discussed draft chapters, and considered the different approaches in Scotland and Wales, including on the title and structure of the reports. The Board were advised that the Working Group will see more draft chapters in the coming months. The Chief Strategy and Policy Officer advised that an update on the report will be provided in March, including on the report title and headlines.

5.4 The Chair of the Human Rights Monitoring Commissioner Working Group advised that the Working Group had not met since the October Board meeting. She advised that, on Human Rights Day on 10 December, the EHRC published new content on the online Human Rights Tracker, reflecting changes in some areas since March 2021. She advised that shadow reports to the UN Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights had been finalised and submitted. These would be published within the next month. She advised that we continue to support civil society organisations to engage with upcoming UN reviews, including an event on 16 January to raise awareness of the Universal Periodic Review recommendations and how to encourage implementation, coordinated by Birmingham City University's Centre for Human Rights.

5.5 The Wales Commissioner advised that the Wales Committee met on 5 December and discussed the Committee's stakeholder engagement plan for 2023/24, priorities for Wales in the 2023/24 EHRC Business Plan, and by correspondence gave comments on the Social Care Inquiry report, and the draft Corporate Values.

5.6 The Scotland Commissioner advised that the Scotland Committee met on 12 December where they discussed the Statutory Report and provided feedback on the Business Plan, as included in the Board paper. She advised that preparations have started to recruit new Committee members and that she will discuss this with the Chairwoman. The Scotland Commissioner provided an update on the Gender Recognition Reform (Scotland) Bill and the EHRC's stakeholder roundtables in Scotland; she noted that the EHRC had published a statement on its position.

5.7 The Board noted that the UK Government had laid a section 35 Scotland Act order withholding royal assent from the Gender Recognition Reform (Scotland) Bill on 17 January. Given that this had now become a constitutional matter, relating to reserved and devolved powers and the engagement of provisions of equality law, it was decided that the Commission would not engage in further public discussions as these were outside our remit, and that our views on the Bill itself were already in the public domain.

6. CEO Report and Chairwoman's update (EHRC 109.03)

6.1 The Board approved the reappointment of Mariam Ahmed to the Scotland Committee from 19 January 2023 for a two-year term.

6.2 Commissioners noted the CEO report, including its updates on strike action to take place on 1 February, the proposed section 23 agreement with the Department for Work and Pensions, progress with the Board improvement plan, and other priorities.

6.3 Commissioners enquired about the EHRC's joint webinar with ACAS for employers about gender pay gap reporting. They were advised that one workshop had taken place and further details could be provided.

Action: Chief Regulator, via the Governance team, to provide Commissioners with details on the webinar with ACAS on gender pay gap reporting.

6.4 Commissioners asked whether the EHRC is taking action relating to disabled people's railcards. The CEO noted that transport is not currently an EHRC strategic priority, but that he would write to the Office of Rail and Road and the Department for Transport so they are aware of the issues.

Action: CEO to write to Office of Rail and Road and/or Department for Transport regarding disabled people's railcards.

6.5 The Chief Regulator updated Commissioners on a secure training centre where we were considering action. She would provide a full update at a future meeting.

Action: Chief Regulator to provide an update on the secure training centre via the CEO report at March Board.

6.6 Commissioners noted that the EHRC had not heard from Sir Peter Soulsby, Mayor of Leicester, following our letter to him of 11 November about violence in Leicester in September 2022. They asked that the EHRC put a short op-ed in a local Leicester newspaper on our duties to foster good relations between groups.

Action: Director of Communications to attempt to place an op-ed in a Leicester newspaper on good relations between groups.

6.7 Commissioners enquired about the roundtable in the House of Lords on the Online Safety Bill on 17 January. The CEO advised Commissioners that the roundtable had gone well, and that Commissioners would be invited to any future such events. He advised that the revised briefing would be provided to the Board.

Action: Chief Strategy and Policy Officer, via the Governance team, to provide the revised Online Safety Bill briefing to Commissioners.

6.8 The Chairwoman considered that the headline results from the 2022 People Survey were encouraging and that the Board is grateful to the CEO and his Leadership Team. The CEO advised that the full results would be analysed to target improvement work and that the P&WC would discuss the results in detail ahead of a report coming to the Board for discussion in March.

6.9 In respect of the financial performance update in the CEO report, Commissioners noted that the EHRC currently predicts a small overall budget overspend. The Chair of ARAC advised that this is preferable to a large underspend, particularly as it would be covered by the Cabinet Office, but that it needs to be managed carefully and that ARAC would look at the detail in the next month. The CEO advised that the EHRC had still not received written delegation for the 2022/23 financial year. It would be difficult for him to fulfil his statutory duties, as Accounting Officer, to Parliament if this continues into the next financial year.

6.10 The Chairwoman updated Commissioners on conversations that had taken place with the Government on ethnicity pay gap reporting, where we had indicated our willingness to work with them to implement an appropriate reporting model. The CEO advised that the EHRC favours all companies gathering information on their staff by ethnicity and other protected characteristics to ensure fairness, and that we are working with FTSE 100 companies who are taking this forward voluntarily. Commissioners discussed the importance of disability reporting by employers too.

6.11 The Chairwoman updated Commissioners on her meeting with the Minister for Women and Equalities on 12 January, including our planned work on the services Code of Practice.

7. Implications of Equality Act 2010 reform (EHRC 109.04, 109.04a, 109.04b)

7.1 The Board discussed the additional, narrower legal advice in the paper, following from its meeting of 23 November 2022, relating to the definition of

sex in the Equality Act 2010. The Board agreed that the Commission should advise the Government on the definition of sex in the Equality Act, subject to a further special Board meeting to be held before 30 March, to discuss the wider implications, communications and stakeholder considerations, and to take note of their consultation on this matter with the statutory Scotland and Wales Committees.

Action: CEO to provide further advice to the Board on the implications of clarifying the definition of sex in the Equality Act 2010.

Action: Governance team to schedule additional Board and Scotland and Wales Committee calls.

8. Social Care inquiry report, communications and handling plan (EHRC 109.05, 109.05a, 109.05b)

8.1 The Board approved publication of the social care inquiry report in February 2023, subject to any further comments by correspondence from Commissioners and final clearance through the CEO and Chairwoman. It was noted that this was a well-presented report given the original parameters had been relatively unfocussed.

Action: Governance team to contact Commissioners for detailed comments on the social care inquiry report and communications plan by correspondence by Friday 20 January.

9. EHRC annual business plan and budget 2023-24 (EHRC 109.06, 109.06a)

9.1 The Board welcomed the draft business plan. They agreed to send detailed comments by correspondence to the CEO, and for the draft business plan to go to ARAC's next formal meeting on 15 February for review before the final version is provided to the Board for approval at its meeting on 30 March.

Action: Governance team to contact Commissioners for detailed comments on the draft business plan by correspondence by 13 February so that this can inform discussion at ARAC.

Action: Head of Business Improvement to provide the draft business plan to ARAC on 15 February.

9.2 Commissioners made the following observations on the draft business plan:

a) to consider partnership opportunities with universities to better understand issues around data protection and access to healthcare for LGBT people;
b) to consider partnership opportunities with others on facial recognition and Artificial Intelligence;
c) to use the people survey results to identify areas for organisational development; and
d) to consider the advice from the Scotland Committee on health and social care services in order to achieve greater impact for our work.

9.3 Commissioners made the following suggestions on financial considerations: to consider

a) the scope for separate funding for specific work, such as updating the statutory Codes of Practice and our guidance, improving our information and knowledge management, digitisation;
b) the allocation of a budget for engagement with civil society organisations;
c) the resource required for work on discrimination in uniformed services; and
d) the Wales Committee's advice on possibly establishing other legal funds in addition to the existing race legal fund.

10. AOB (EHRC 109.08, 109.08a, 109.08b, 109.08c, 109.09a, 109.09b, 109.09c, 109.09d, 109.09e, 109.09f, 109.09fa, 109.09g, 109.09h)

10.1 The Board noted the Forward Schedule, the draft minutes of the Human Rights Monitoring Commissioner Working Group, the Statutory Report Commissioner Working Group, the P&WC, the Wales Committee, and the Scotland Committee meetings.